

FIRST REGULAR SESSION

# SENATE BILL NO. 72

95TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR STOUFFER.

Pre-filed December 1, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

0369S.011

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## AN ACT

To repeal section 197.318, RSMo, and to enact in lieu thereof one new section relating to the transfer of long-term care beds to certain new health care facilities.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 197.318, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 197.318, to read as follows:

197.318. 1. The provisions of section 197.317 shall not apply to a  
2 residential care facility, assisted living facility, intermediate care facility or  
3 skilled nursing facility only where the department of social services has first  
4 determined that there presently exists a need for additional beds of that  
5 classification because the average occupancy of all licensed and available  
6 residential care facility, assisted living facility, intermediate care facility and  
7 skilled nursing facility beds exceeds ninety percent for at least four consecutive  
8 calendar quarters, in a particular county, and within a fifteen-mile radius of the  
9 proposed facility, and the facility otherwise appears to qualify for a certificate of  
10 need. The department's certification that there is no need for additional beds  
11 shall serve as the final determination and decision of the committee. In  
12 determining ninety percent occupancy, residential care facility and assisted living  
13 facility shall be one separate classification and intermediate care and skilled  
14 nursing facilities are another separate classification.

15 2. The Missouri health facilities review committee may, for any facility  
16 certified to it by the department, consider the predominant ethnic or religious  
17 composition of the residents to be served by that facility in considering whether  
18 to grant a certificate of need.

19 3. There shall be no expenditure minimum for facilities, beds, or services  
20 referred to in subdivisions (1), (2) and (3) of section 197.317. The provisions of

21 this subsection shall expire January 1, 2003.

22 4. As used in this section, the term "licensed and available" means beds  
23 which are actually in place and for which a license has been issued.

24 5. The provisions of section 197.317 shall not apply to any facility where  
25 at least ninety-five percent of the patients require diets meeting the dietary  
26 standards defined by section 196.165, RSMo.

27 6. The committee shall review all letters of intent and applications for  
28 long-term care hospital beds meeting the requirements described in 42 CFR,  
29 Section 412.23(e) under its criteria and standards for long-term care beds.

30 7. Sections 197.300 to 197.366 shall not be construed to apply to litigation  
31 pending in state court on or before April 1, 1996, in which the Missouri health  
32 facilities review committee is a defendant in an action concerning the application  
33 of sections 197.300 to 197.366 to long-term care hospital beds meeting the  
34 requirements described in 42 CFR, Section 412.23(e).

35 8. Notwithstanding any other provision of this chapter to the contrary:

36 (1) A facility licensed pursuant to chapter 198, RSMo, may increase its  
37 licensed bed capacity by:

38 (a) Submitting a letter of intent to expand to the division of aging and the  
39 health facilities review committee;

40 (b) Certification from the division of aging that the facility:

41 a. Has no patient care class I deficiencies within the last eighteen months;  
42 and

43 b. Has maintained a ninety-percent average occupancy rate for the  
44 previous six quarters;

45 (c) Has made an effort to purchase beds for eighteen months following the  
46 date the letter of intent to expand is submitted pursuant to paragraph (a) of this  
47 subdivision. For purposes of this paragraph, an "effort to purchase" means a copy  
48 certified by the offeror as an offer to purchase beds from another licensed facility  
49 in the same licensure category; and

50 (d) If an agreement is reached by the selling and purchasing entities, the  
51 health facilities review committee shall issue a certificate of need for the  
52 expansion of the purchaser facility upon surrender of the seller's license; or

53 (e) If no agreement is reached by the selling and purchasing entities, the  
54 health facilities review committee shall permit an expansion for:

55 a. A facility with more than forty beds may expand its licensed bed  
56 capacity within the same licensure category by twenty-five percent or thirty beds,

57 whichever is greater, if that same licensure category in such facility has  
58 experienced an average occupancy of ninety-three percent or greater over the  
59 previous six quarters;

60       b. A facility with fewer than forty beds may expand its licensed bed  
61 capacity within the same licensure category by twenty-five percent or ten beds,  
62 whichever is greater, if that same licensure category in such facility has  
63 experienced an average occupancy of ninety-two percent or greater over the  
64 previous six quarters;

65       c. A facility adding beds pursuant to subparagraphs a. or b. of this  
66 paragraph shall not expand by more than fifty percent of its then licensed bed  
67 capacity in the qualifying licensure category;

68       (2) Any beds sold shall, for five years from the date of relicensure by the  
69 purchaser, remain unlicensed and unused for any long-term care service in the  
70 selling facility, whether they do or do not require a license;

71       (3) The beds purchased shall, for two years from the date of purchase,  
72 remain in the bed inventory attributed to the selling facility and be considered  
73 by the department of social services as licensed and available for purposes of this  
74 section;

75       (4) Any residential care facility licensed pursuant to chapter 198, RSMo,  
76 may relocate any portion of such facility's current licensed beds to any other  
77 facility to be licensed within the same licensure category if both facilities are  
78 under the same licensure ownership or control, and are located within six miles  
79 of each other;

80       (5) A facility licensed pursuant to chapter 198, RSMo, may transfer or sell  
81 individual long-term care licensed beds to facilities qualifying pursuant to  
82 paragraphs (a) and (b) of subdivision (1) of this subsection. Any facility which  
83 transfers or sells licensed beds shall not expand its licensed bed capacity in that  
84 licensure category for a period of five years from the date the licensure is  
85 relinquished.

86       9. Any existing licensed and operating health care facility offering  
87 long-term care services may replace one-half of its licensed beds at the same site  
88 or a site not more than thirty miles from its current location if, for at least the  
89 most recent four consecutive calendar quarters, the facility operates only fifty  
90 percent of its then licensed capacity with every resident residing in a private  
91 room. In such case:

92       (1) The facility shall report to the division of aging vacant beds as

93 unavailable for occupancy for at least the most recent four consecutive calendar  
94 quarters;

95 (2) The replacement beds shall be built to private room specifications and  
96 only used for single occupancy; and

97 (3) The existing facility and proposed facility shall have the same owner  
98 or owners, regardless of corporate or business structure, and such owner or  
99 owners shall stipulate in writing that the existing facility beds to be replaced will  
100 not later be used to provide long-term care services. If the facility is being  
101 operated under a lease, both the lessee and the owner of the existing facility shall  
102 stipulate the same in writing.

103 10. Nothing in this section shall prohibit a health care facility licensed  
104 pursuant to chapter 198, RSMo, from being replaced in its entirety within fifteen  
105 miles of its existing site so long as the existing facility and proposed or  
106 replacement facility have the same owner or owners regardless of corporate or  
107 business structure and the health care facility being replaced remains unlicensed  
108 and unused for any long-term care services whether they do or do not require a  
109 license from the date of licensure of the replacement facility.

110 **11. (1) Notwithstanding any provisions of this chapter to the**  
111 **contrary, a new health care facility may be licensed under chapter 198,**  
112 **RSMo, by arranging for the transfer of licensed skilled nursing or**  
113 **assisted living facility beds to such new health care facility, provided**  
114 **the following criteria are satisfied:**

115 (a) A letter of intent to develop the new health care facility is  
116 submitted to the department and to the Missouri health facilities  
117 review committee;

118 (b) The department certifies that the beds proposed for transfer  
119 are from skilled nursing or assisted living facilities in this state and  
120 have maintained an average occupancy in the relevant licensure  
121 category of under seventy percent for the previous six calendar  
122 quarters;

123 (c) The proposed new health care facility is an integrated part  
124 of a continuing care retirement community that includes a minimum of  
125 one thousand independent living facility beds and a medical clinic, and  
126 otherwise satisfies all conditions of licensure under chapter 198, RSMo;  
127 and

128 (d) The number of skilled nursing or assisted living facility beds

129 in the proposed new health care facility does not exceed a ratio of one  
130 to eleven as compared to the aforesaid independent living facility beds.

131 (2) The transferring of beds under this subsection shall only be  
132 within the same licensure category and not be subject to review under  
133 sections 197.300 to 197.366. The facility transferring beds under this  
134 subsection shall not seek to add beds within a five-year period of time  
135 after the transaction.

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